STATE OF MICHIGAN

COURT OF APPEALS

AMY M. BLOOM, formerly known as AMY M. OGILVIE, Plaintiff-Appellee, v ERIC ARLINGTON OGILVIE, Defendant-Appellant.	UNPUBLISHED February 12, 2019 Nos. 342337; 342354 Alpena Circuit Court LC No. 11-004212-DM

Before: SWARTZLE, P.J., and MARKEY and RONAYNE KRAUSE, JJ.

PER CURIAM.

These appeals arise from defendant's motion to show cause with respect to plaintiff denying him parenting time with the parties' two minor children. After the trial court ordered the parties to participate in a psychological evaluation regarding parenting time, and received the report from the psychologist, the trial court suspended defendant's parenting time until he complied with the treatment recommendations from the resulting psychological evaluation. Subsequently, defendant moved to reinstate parenting time. Defendant, acting as his own attorney, now appeals as of right from two resulting orders entered on January 9, 2018. In Docket No. 342337, defendant appeals the trial court's order denying his motion to restore parenting time. In Docket No. 342354, defendant appeals the trial court's order prohibiting him "from appearing at any Alpena Public School facility" and prohibiting him "from having any contact with the minor children in a location generally open to the public." We affirm.

I. BACKGROUND

Defendant was serving a prison term when the trial court entered the parties' judgment of divorce in 2012. The judgment awarded plaintiff sole legal and physical custody of the parties' two children, who were ages five and nearly two, and awarded defendant reasonable parenting time. Defendant was released from prison in June 2015. Plaintiff and defendant attempted to establish parenting time in a manner that would safeguard the children, but were unsuccessful. On October 22, 2015, defendant filed a motion to show cause regarding plaintiff's denial of his parenting time. On December 2, 2015, the parties agreed to a supervised visitation schedule,

commencing December 6, 2015,[1] and unsupervised visitation for a three-month trial period began on January 19, 2016.

The matter was again before the trial court on February 2, 2016. Following an in-chambers meeting between the parties and their counsel, the trial court entered an order on March 8, 2016, requiring both parties to be separately evaluated by a psychologist, Dr. Ted Stiger, to assist the trial court in deciding the issue of parenting time. On June 9, 2016, the trial court entered another order requiring that the children be evaluated to determine their capabilities to have a parenting-time schedule. Dr. Stiger determined that it would be potentially "overwhelming and disorganizing" for the children to have any contact with their father "due to his current degree of paranoia, delusional thinking and how this is being manifested in all of [his] emotionally intense, driving and overly intellectualized ongoing legal like battles and conflicts along with his difficulties with psychological boundaries." Dr. Stiger further determined that defendant was "extending himself to such a degree in these conflict pursuits that he is worsening his overall psychological functioning," and risking a complete psychotic/depressive break, and that there was the need for the local mental health/human service system to be preemptive in some coordinated fashion. Dr. Stiger concluded:

> As for treatment for [defendant], he is in need of intensive individual psychotherapy and psychiatric involvement in regard to medication efforts to directly address his paranoid obsessive and/or delusional thinking and to reduce his current level of affective intensity and drive (the likely need for mood stabilizing and/or neuroleptic medication treatment). The psychotherapy component, though, needs to be highly emphasized in this matter in that even though there is the inclination, locally, to just focus on inferred biologic issues and causation pertaining to mental health treatment . . . .
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> It does appear that the above treatment does need to be provided by Northeast Michigan CMH [Community Mental Health] in that they have both the availability of psychiatric medication treatment, talk therapy and case management coordination . . .and for the possible utilization of psychiatric hospitalization if needed. CMH also makes sense for these interventions in that that is where [one child] is receiving his mental health treatment and there will be the future need for family therapy coordination efforts contingent upon [defendant's] psychological readiness to involve himself in such a process (and where there will be the need for direct and open communication between [defendant's] psychotherapist/psychiatrist and the children's psychotherapists to coordinate and facilitate such a process and to determine readiness).

[1] This agreement was not reduced to a written order.

The psychologist also found that the evaluation process did not support defendant's claims of plaintiff engaging in any alienation process with the children at either a conscious or unconscious level.

Based on Dr. Stiger's conclusions and recommendation, the trial court entered an order on November 16, 2016, suspending defendant's parenting time "until such time as he receives the psychiatric treatment" recommended by Dr. Stiger. The trial court entered orders overruling defendant's objections to the order, his supplemental objections to the order, and his corrections to the supplemental objections.

On June 19, 2017, defendant filed an ex-parte motion to restore parenting time. The trial court granted defendant 21 days to submit proofs to support his claim that he had complied with the trial court's November 16, 2016 order for the mental health treatment recommended by Dr. Stiger. After defendant submitted his proofs, the trial court held a hearing on September 8, 2017, to allow defendant to present testimony from two treatment providers identified by defendant. James Harrison, a clinical psychologist, testified that did not perform a psychological evaluation on defendant but, rather, only performed a "social assessment." Harrison testified that he had 10 outpatient talk-therapy sessions with defendant that focused on "dealing with stressors and the mild anxiety he was experiencing." Harrison testified that he did not observe the paranoia that Dr. Stiger reported. A licensed social worker was present, but was unable to testify at the hearing because defendant did not waive his doctor-patient privilege. The trial court granted defendant's request for a 14-day adjournment to allow defendant to consider whether he wanted to waive the privilege and, if so, to provide a written waiver to the trial court. When defendant did not file a written waiver with the trial court within the time allotted, the trial court closed the record and took the matter under advisement.

The trial court entered an opinion and order on November 16, 2017. In light of Harrison's testimony, the trial court ordered an evaluation by Dr. Michael P. Hayes to determine the children's present capacity to handle exposure to defendant. Defendant did not participate in the evaluation and, on January 9, 2018, the trial court entered its order denying defendant's motion to restore parenting time. On the same date, the trial court entered a separate order prohibiting defendant from appearing at any Alpena Public School facility and prohibiting defendant from having any contact with the children in a location generally open to the public.

II. ANALYSIS

Defendant raises a number of arguments on appeal, many of which are not related to the parenting-time orders that are before us on appeal. The underlying themes of his arguments related to the orders appealed are that the trial court erred by denying his motion to restore parenting time and that the trial court violated his constitutional rights. This Court reviews de novo claims that a party was deprived of due process. *Elba Twp v Gratiot Co Drain Comm'r,* 493 Mich 265, 277; 831 NW2d 204 (2013). Similarly, this Court reviews de novo whether a trial court violated the constitutional rights of a parent. *In re TK*, 306 Mich App 698, 703; 859 NW2d 208 (2014). "Orders concerning parenting time must be affirmed on appeal unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court made a clear legal error on a major issue." *Pickering v Pickering*, 268 Mich App 1, 5; 706 NW2d 835 (2005). "Under the great weight of the evidence

standard, this Court should not substitute its judgment on questions of fact unless the facts clearly preponderate in the opposite direction." *Shade v Wright*, 291 Mich App 17, 21; 805 NW2d 1 (2010). In child-custody cases, an abuse of discretion "exists when the trial court's decision is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008). Clear legal error occurs "when the trial court errs in its choice, interpretation, or application of the existing law." *Shulick v Richards*, 273 Mich App 320, 323; 729 NW2d 533 (2006).

"The term child-custody determination' means a judgment, decree, or other court order providing for legal custody, physical custody, or parenting time with respect to a child. Child-custody determination includes a permanent, temporary, initial, and modification order." *Shade*, 291 Mich App at 22 (cleaned up). A trial court may not modify a parenting-time order without conducting a threshold inquiry to determine if there has been a "change of circumstances" or "proper cause shown." *Terry v Affum (On Remand)*, 237 Mich App 522, 534-535; 603 NW2d 788 (1999).

"The child's best interests govern a court's decision regarding parenting time." *Shade*, 291 Mich App at 30-31. "It is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents." MCL 722.27a(1). Therefore, "parenting time shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted parenting time." *Id*. If "it is shown on the record by clear and convincing evidence that it would endanger the child's physical, mental, or emotional health," the trial court need not order parenting time. MCL 722.27a(3).

In this case, the trial court had already determined, after reviewing Dr. Stiger's evaluation and hearing his testimony, that it was in the children's best interests to modify the parenting time order and suspend defendant's parenting time until he complied with Dr. Stiger's treatment recommendations. Thus, the parenting-time order in place provided no parenting time for defendant. The orders now on appeal arise from defendant's June 9, 2017 ex-parte motion to restore parenting time in which he asserted that he obtained the treatment recommended by Dr. Stiger. Because defendant was seeking to modify the existing parenting time order, he needed to initially show a change of circumstances, i.e., that he obtained the treatment recommended by the psychologist and ordered by the trial court.

Defendant presented some evidence of mental-health treatment from Dr. Harrison, whose opinion regarding defendant's mental health differed from that of Dr. Stiger. Presumably because of the variances between Dr. Harrison's and Dr. Stiger's opinions regarding defendant's mental health, as well as the impact of defendant's mental health on his parenting time with the children, the trial court ordered that an evaluation be conducted by Dr. Hayes to "determine the children's present capacity to handle exposure to defendant." Plaintiff and the children apparently completed their assessments, but defendant did not. Under these circumstances, we find no discernible error in the trial court's apparent conclusion that defendant failed to establish a change of circumstances or proper cause to modify the parenting-time order. Because defendant's parenting time is suspended, we find no discernible error in the trial court's order prohibiting defendant from having contact in public places with the children.

Similarly, there is no merit to defendant's constitutional arguments. The trial court held hearings on defendant's motion to restore parenting time and he fully participated in the proceedings. The trial court afforded defendant a meaningful opportunity to be heard and his due-process rights remain intact. See *Hanlon v Civil Serv Comm*, 253 Mich App 710, 723; 660 NW2d 74 (2002) (holding that due process in civil cases generally requires notice of the nature of the proceedings and an opportunity to be heard in a meaningful time and manner). Further, what was at issue in this case was not defendant's custody of his children, which he did not have, but his parenting-time rights. Defendant was aware that his parenting time was suspended until he complied with Dr. Stiger's recommendations. He was given notice that the trial court ordered the psychological evaluation by Dr. Hayes, and, instead of complying with the order, defendant disputed the necessity of the evaluation. Defendant continues to have the opportunity to move to restore his parenting time in the future. Under these circumstances, we conclude that defendant was afforded sufficient due process.

To the extent that defendant claims that the trial court's order requiring him to comply with the recommendations from the psychological evaluation constituted "involuntary mental health treatment" under the Mental Health Code, MCL 330.1403, and violates his liberty interests and privacy rights, defendant cited no relevant authority for the proposition that an order requiring compliance with the recommendations of a psychological evaluation in a child-custody or parenting-time case constitutes involuntary mental-health treatment under the Mental Health Code, MCL 330.1001 *et seq*. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *People v Kevorkian*, 248 Mich App 373, 389; 639 NW2d 291 (2001). Defendant's "failure to properly address the merits of his assertion of error constitutes abandonment of the issue." *Houghton v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003). In any event, the trial court's order is not the equivalent of an order compelling involuntary mental-health treatment. It merely set forth conditions to be satisfied to allow defendant to pursue parenting time that would not endanger the children's physical, mental, or emotional health.

Defendant also argues that there were numerous instances of at least appearances of impropriety and risk of bias by the trial court.[2] In *In re Contempt of Henry*, 282 Mich App 656, 679-680; 765 NW2d 44 (2009) (cleaned up), this Court stated:

> MCR 2.003(B)(1) provides that a judge is disqualified when the judge is personally biased or prejudiced for or against a party or attorney. Generally, a trial judge is not disqualified absent a showing of actual bias or prejudice. The mere fact that a judge ruled against a litigant, even if the rulings are later determined to be erroneous, is not sufficient to require disqualification or

[2] Most of defendant's allegations of judicial bias involve the original divorce proceeding or other post-judgment proceedings that took place between 2012 and 2015, and are not within the scope of the parenting-time proceedings at issue in the present appeals.

> reassignment. Judicial rulings, in and of themselves, almost never constitute a valid basis for a motion alleging bias, unless the judicial opinion displays a deep-seated favoritism or antagonism that would make fair judgment impossible and overcomes a heavy presumption of judicial impartiality.

Defendant claims that there were a "series of actions and comments by the circuit court that in effect shifted the burden of proof onto the defendant" and that there was "new evidence of impropriety by the circuit judge in this case and another similar case." Defendant merely cites transcript pages without offering any analysis or argument to support a showing of actual bias or prejudice. It is not enough for defendant to announce a position and leave it up to this Court to discover and rationalize the basis for his claims. *Kevorkian*, 248 Mich App at 389. Nonetheless, the cited portions of the record do not demonstrate actual bias or prejudice on the part of the trial court.[3] This argument is without merit.

Affirmed.

/s/ Brock A. Swartzle
/s/ Jane E. Markey
/s/ Amy Ronayne Krause

[3] Defendant also argues that he was denied due process because the trial court held a "secret hearing" on February 2, 2016. Defendant's argument is not supported by the record. The hearing on this date was an in-chambers hearing attended by defendant's counsel.